

SEWER SERVICE AND AVAILABILITY AGREEMENT

This Sewer Service and Availability Agreement (the "Agreement") is by and between the Town of Westfield, Indiana, an Indiana municipality ("Westfield") and Wilfong and Kreutz, LLC and its related entities and assigns ("Wilfong"), and is executed on the dates corresponding to signatures below;

WITNESSETH:

WHEREAS, Westfield renders sanitary sewer utility service in and around the corporate limits of Westfield and in Washington Township, Hamilton County, ("Washington Township");

WHEREAS, Westfield and Washington Township have experienced and are experiencing significant growth and development;

WHEREAS, the significant growth and development in and around Westfield and in Washington Township have caused Westfield to fund major capital improvements to its sanitary sewer utility to support and accommodate such development;

WHEREAS, in connection with said capital improvements, Westfield has issued sewer bonds;

WHEREAS, Wilfong, either itself or by and through related entities owns and/or is the contract purchaser of certain real estate located in Washington Township more particularly described in what is attached hereto and incorporated herein by reference as Exhibit "A," which shall include any additional real estate acquired by Wilfong after the date of this Agreement which is either (a) adjacent to the real estate described in Exhibit "A" or (b) is adjacent to real estate acquired pursuant to (a) above. (the "Real Estate");

WHEREAS, Wilfong, by and through related entities and/or its assigns intends to develop, or cause the development of, the Real Estate known as Towne Road Crossing, necessitating approximately 722 Equivalent Dwelling Units ("EDUs") for sanitary sewer utility;

WHEREAS, in order to service the development of the Real Estate, Westfield is willing to reserve 722 EDUs of sanitary sewer treatment capacity; and

WHEREAS, an EDU of sanitary sewer service shall hereafter be referred to as a "Sewer EDU".

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements to be kept and performed hereunder, including the aforesaid recitals, which shall be incorporated herein by reference and construed as terms of this Agreement with full force and effect equal to the following terms, the parties hereto agree as follows:

Section 1. Minimum EDU Commitment. Per the schedule specified in Section 3 below and at the price specified in Section 4 below, the Developer agrees and commits to purchasing at least 722 Sewer EDUs (the "Purchase Commitment"). Wilfong's obligations hereunder shall be contingent upon both (a) Wilfong receiving zoning approval for its project to develop the Real Estate as a Planned Unit Development on or before December 31, 2007, and (b) with the aggregate number of units of commercial, office, retail and residential units as identified in Exhibit C. In the event a Planned Unit Development is approved by Westfield with fewer units in any category, both Parties agree to reduce the Purchase Commitment by the appropriate number of Sewer EDUs.

Section 2. Westfield's Minimum EDU Commitment. At the prices which follow in Section 4, Westfield agrees and commits to make available, to service the demands of the Real Estate and the Development to be constructed thereon, at least 722 Sewer EDUs.

Section 3. Take Down Schedule and Anniversary Date. The Developer commits to purchase the aforementioned Sewer EDUs according to the schedule attached hereto as Exhibit "B" (the "Takedown Schedule"). The date of the first Takedown of Sewer EDUs shall establish the "Anniversary Date" for the purposes of payment each year for Wilfong's Purchase Commitment for such year, provided, however, that the date of the first Takedown shall be no later than August 1, 2009. For example: if Wilfong or a Permitted Assignee (as hereinafter defined) first purchases 100 Sewer EDUs on April 1, 2009, the Anniversary Date for the purposes of this Agreement shall be April 1st. If Wilfong and/or a Permitted Assignee has not purchased any Sewer EDUs on or before August 1, 2009, then Wilfong shall pay for its Purchase Commitment for 2009 on August 1, 2009 and August 1st shall be the Anniversary Date for the purposes of this Agreement. Once established, the Anniversary Date shall be the date during each year shown on the Takedown Schedule on which Wilfong shall pay Westfield for all or any portion of its Purchase Commitment for such not previously purchased during the preceding one-year period, subject to the carry forward provisions of Section 5.

Section 4. Price to Be Paid Per EDU. The price to be paid, per Sewer EDU, shall be the prevailing rate, as established by Ordinance and existing at the time payment is made at the following reduced schedule:

Availability Fee Discount of 10%

At any time during the term of this Agreement, if the price as set forth in this Section 4 is greater than the price which Westfield agrees to charge another developer or other third party for the purchase of Sewer EDUs for the same period at a discount of greater than ten percent (10%) or at a price per Sewer EDU which when calculated on a per Sewer EDU basis is less than the price to be paid by Wilfong hereunder, Wilfong and/or a Permitted Assignee shall be entitled to purchase Sewer EDUs for that period at a price equivalent to the price offered to such other developer or other third party. Fee waivers referenced under Chapter 2, Division 8 of the Municipal Code of the Town of Westfield, Indiana shall not be considered in any pricing or calculation for purposes of this paragraph. Any agreement entered into by the Town prior to the execution of this agreement shall not be subject to Section 4 of this agreement.

Section 5. Sewer EDU Carry Forward. In the event that, at the end of any of the foregoing one year periods set forth in Exhibit "B", the number of Sewer EDUs purchased by the Wilfong for such one year period exceeds the number of Sewer EDUs which Wilfong has committed to purchase during such one year period, the number of Sewer EDUs purchased by Wilfong in excess of the Purchase Commitment for that year will be credited against the Purchase Commitment for 2019 (the last year of Wilfong Purchase Commitment) until there is no longer any Purchase Commitment for the 2019. Thereafter, any excess purchased by Wilfong shall be credited against Wilfong's Purchase Commitment for 2018 and so on, and this Agreement shall be revised accordingly. Wilfong shall receive a credit against its Purchaser Commitment for any Sewer EDUs purchased by any subsequent purchaser of the Real Estate.

Section 6. Acceleration of Purchase. The schedule in Section 3 above specifies the minimum number of Sewer EDUs which Wilfong must acquire per year interval and, in the Wilfong's sole discretion, the Wilfong may elect at any time or times to purchase more than such yearly minimum at the price specified in Section 4 above as applicable to the year of purchase.

Section 7. Assignment. Wilfong shall have the right to assign all or a portion of its Purchase Commitment hereunder to another entity in which Ralph L. Wilfong II, is a principal or which is under common control with Developer or to any subsequent

purchaser of any of the Real Estate (a "Permitted Assignee"). Otherwise, neither Developer nor Westfield may assign this Agreement without the other's prior written consent, which consent shall not be unreasonably withheld.

Section 8. Authority. Each undersigned person signing on behalf of any party that is a municipality or limited liability company certifies that (i) he is fully empowered and duly authorized by any and all necessary action or consent to execute and deliver this Agreement for and on behalf of the party for which he signs, (ii) that each party hereto has full capacity, power, and authority to carry out and enter into the obligations under this Agreement, and (iii) that this Agreement has been duly authorized, executed, and delivered and constitutes a legal, valid, and binding obligation of each party.

THE TOWN OF WESTFIELD, INDIANA

By: _____
Bruce Hauk, Acting Town Manager
and Director of Public Works

Date: _____

WILFONG AND KREUTZ, LLC

By: Ralph L. Wilfong II
Ralph L. Wilfong, II, President
Date: 11.7.07

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Bruce Hauk, Acting Town Manager and Director of Public Woks of the Town of Westfield, Indiana, and executed the foregoing Water and Sewer Service and Availability Agreement on behalf of the Town of Westfield, Indiana.

Witness my hand and Notarial Seal, this ____ day of November 2007.

Notary Public – Signature

Notary Public – Printed

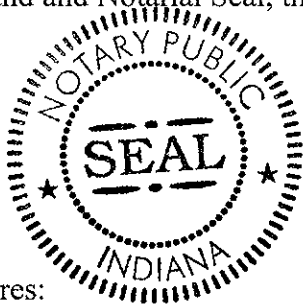
My Commission Expires:

My County of Residence:

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Ralph L. Wilfong, II, President of Wilfong and Kreutz, LLC, and executed the foregoing Water and Sewer Service and Availability Agreement on behalf of WILFONG & KREUTZ.

Witness my hand and Notarial Seal, this 7th day of November 2007.



[Signature]
Notary Public – Signature

SCOTT L. SAUCEDO
Notary Public – Printed

My Commission Expires:

FEB. 1, 2013

My County of Residence:

MARION

EXHIBIT A

Land Description

A part of Section 32, Township 19 North, Range 3 East, and a part of Section 5, Township 18 North, Range 3 East, Washington Township, Hamilton County, Indiana, being described as follows:

Beginning at the Southeast corner of Section 32, the Point of Beginning; thence along the south line of said Section 32, South 89 degrees 25 minutes 04 seconds West, for a distance of 180.32 feet; thence North 00 degrees 00 minutes 14 seconds East, for a distance of 338.21 feet; thence North 89 degrees 24 minutes 34 seconds West, for a distance of 136.80 feet; thence South 00 degrees 13 minutes 15 seconds West, for a distance of 341.03 feet to said section line; thence along said section line, South 89 degrees 25 minutes 04 seconds West, for a distance of 606.03 feet; thence North 00 degrees 19 minutes 26 seconds West, for a distance of 210.76 feet; thence South 89 degrees 37 minutes 45 seconds West, for a distance of 370.89 feet; thence South 00 degrees 05 minutes 13 seconds West, for a distance of 212.14 feet to said section line; thence along said section line, North 89 degrees 25 minutes 04 seconds East, for a distance of 269.25 feet; thence South 00 degrees 09 minutes 41 seconds East, for a distance of 753.36 feet to centerline of the old Central Indiana Railroad; thence along said centerline, South 89 degrees 38 minutes 27 seconds East, for a distance of 1108.27 feet to the East line of said Section 5; thence along the East line of said Section 5, South 00 degrees 03 minutes 48 seconds West, for a distance of 844.77 feet; thence South 55 degrees 42 minutes 56 seconds West, for a distance of 505.47 feet; thence South 88 degrees 11 minutes 48 seconds West, for a distance of 215.77 feet; thence South 20 degrees 34 minutes 10 seconds West, for a distance of 617.06 feet; thence South 89 degrees 34 minutes 54 seconds West, for a distance of 1809.40 feet; thence North 00 degrees 03 minutes 34 seconds West, for a distance of 2258.36 feet; thence North 88 degrees 45 minutes 50 seconds East, for a distance of 512.65 feet; thence North 00 degrees 50 minutes 17 seconds West, for a distance of 207.53 feet to the North line of said Section 5; thence along said Section line, South 89 degrees 25 minutes 04 seconds West, for a distance of 551.30 feet; thence North 00 degrees 10 minutes 10 seconds East, for a distance of 1337.57 feet; thence North 89 degrees 50 minutes 15 seconds East, for a distance of 1322.97 feet; thence North 00 degrees 05 minutes 17 seconds East, for a distance of 631.24 feet; thence North 89 degrees 27 minutes 26 seconds East, for a distance of 1301.39 feet to the East Section line of said Section 32; thence along said East Section line, South 00 degrees 13 minutes 13 seconds West, for a distance of 1958.25 feet to the Point of Beginning.

Containing 214.168 acres, more or less

EXHIBIT B

The Takedown Schedule

<u>Year</u>	<u>EDU's Committed</u>
2009	15
2010	24
2011	24
2012	24
2013	24
2014	31
2015	100
2016	100
2017	125
2018	125
2019	130
	722

EXHIBIT C

The Approved Units

ARTICLE 17. SQUARE FOOTAGE, RESIDENTIAL UNITS, DENSITY AND OPEN SPACE STATISTICS

Section 17.1 Square Footage and Residential Unit Estimates, Maximum Densities:

Airport Hospitality District: 65 Acres (Approximate)
Retail/Office/Service Space: 300,000 Sq.Ft. (Approximate)
Hotel: 100 Rooms (Approximate)
Apartments: 288 as illustrated
300 units (Maximum)

Neighborhood Commercial District: 19 Acres (Approximate)
Retail/Office/Service Space: 83,000 Sq.Ft. (Approximate)
Townhomes: 68 as illustrated (Approximate)
100 Units (Maximum)

Multi-Use District: 18 Acres (Approximate)
Office Space: 130,000 Sq. Ft. (Approximate)

Single Family Attached District: 16 Acres (Approximate)
Quads: 60 as illustrated
Density: 4.5 Units per Acre (Maximum)

Rural Southwest District: 74 Acres (Approximate)
Single Family Detached: 74 as illustrated
Density: 1.0 Units per Acre (Maximum)

Aggregate Data:
PUD - total acreage: 214 Acres (Approximate)
Open Space - total acreage: 64.0 Acres (Approximate)
Retail Space - total Sq. Ft.: 250,000 Sq.Ft. (Approximate)
Office/Service Space - total Sq. Ft.: 270,000 Sq.Ft. (Approximate)

Multi-Family Apartment Units: **300 Units (Maximum)**

Single Family Detached and Attached Dwellings - Total Units: **270 Units (Maximum)**

Section 17.2 Open Space Statistics:

Airport Hospitality District:	65 Acres (Approximate) /	10 Acres (Approximate)
Neighborhood Commercial District:	19 Acres (Approximate) /	4 Acres (Approximate)
Multi-Use District:	18 Acres (Approximate) /	5 Acres (Approximate)
Single Family Attached District:	16 Acres (Approximate) /	5 Acres (Approximate)
Rural Southwest District:	74 Acres (Approximate) /	48 Acres (Approximate)

Total: **214 Acres (Approximate) / 72 Acres (Approximate)**

Total PUD Open Space: **25% (Minimum)**